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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 540-527	
		Application Number 10/511,848	Filed October 26, 2004
		First Named Inventor BRIANCOURT	
		Art Unit 3644	Examiner E. Mayle

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

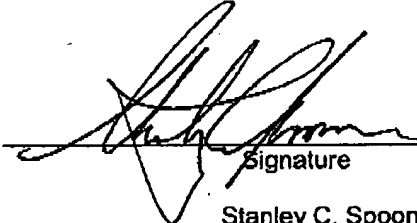
I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☒ Attorney or agent of record 27,393
(Reg. No.)

☐ Attorney or agent acting under 37CFR 1.34.
Registration number if acting under 37 C.F.R. § 1.34 _____


Signature
Stanley C. Spooner

Typed or printed name

703-816-4028
Requester's telephone number

December 21, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Rejection mailed September 21, 2006 (Paper No. 031406).

During a telephone conference with Examiner Mayle on December 18, 2006, the Examiner confirmed that section 2 on page 2 of the Final Rejection included several typographical errors and that the claims rejected therein were rejected under 35 USC §103 as being obvious over Riggles (U.S. Patent 2,406,710) in view of General Aircraft Limited (GB-A-537,234).

Admissions by the Examiner

The Examiner's various admissions are very much appreciated. Firstly, the Examiner admits in section 4 on page 2 of the Final Rejection that the transverse door of the Riggles reference "is exposed to the slipstream in the open position." The Examiner also confirms this admission on page 9, line 2 and again in lines 11-12 of the Official Action.

Secondly, the Examiner also admits that the General Aircraft Limited reference (GB) "has only one door" (page 9, section 31 of the Official Action).

Unfortunately, the Examiner does not admit that the GB reference, with respect to a landing gear door, does not teach a transverse door "disposed out of said slipstream in the open position." The door's extension into the slipstream can clearly be seen in Figure 1 which is the only figure relating to a landing gear door (It is noted that the other views of the GB reference relate to bomb bay doors which are located in the slipstream, but extend parallel to the

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slipstream, thereby avoiding the increased drag of a transverse door which extends in the slipstream).

Furthermore, the desirability of the GB door extending into the slipstream is contained in the related discussion in the GB reference at page 3, lines 3-9 which indicates that it intentionally leaves a portion of the transverse door disposed in the slipstream so as to assist in closure of the door.

Thus, contrary to the Examiner's allegations, GB does not teach a transverse door which is "disposed out of said slipstream in the open position." A significant portion of the door is intentionally and purposefully left in the slipstream.

Error #1. The Examiner apparently ignores the claim 1 requirements of (a) "a plurality of doors" where the doors have rotational axes that are "transverse" to each other and (b) the transverse door is disposed "out of said slipstream in the open position"

Applicant's claim 1 specifies a landing gear door assembly which includes "a plurality of doors." Thus, the claim specifically requires more than a single door. Additionally, claim 1 specifies that the transverse door is mounted for rotation about a horizontal axis "that is transverse to the first generally longitudinal axis" of the first door. Therefore, the claim not only requires a plurality of doors, but their rotational axes must be transverse to each other.

Claim 1 also specifies that "the transverse door is disposed out of said slipstream in the open position." The claim does not state that "a portion of the door" is outside the slipstream and thus, the entire door must be out of the slipstream.

The outstanding Official Action seems to indicate that the Examiner has ignored the requirement for a plurality of doors, doors which are mutually transverse and the transverse door "out of said slipstream."

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Error #2. The Examiner provides no suggestion for combining the prior art references

The Court of Appeals for the Federal Circuit has held in the case of *In re Rouffet*, 47 USPQ2d 1453, 1457-8 (Fed. Cir. 1998) that

to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court **requires the examiner to show a motivation** to combine the references that create the case of obviousness. In other words, **the Examiner must show reasons** that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. (emphasis added).

The Examiner cites a portion of the GB reference as allegedly teaching that it is a known disadvantage to open a transverse door into the slipstream (and thus, supposedly, one of ordinary skill will avoid locating the transverse door in the slipstream). Yet, the GB reference contains a specific teaching of the desirability of locating a transverse door which extends into the slipstream ("part 7' remains projecting down as shown so that the jack action is in closure assisted by the airflow over the skin 6 when the aircraft is in flight" GB page 3, lines 6-9).

There is no disclosure in the GB reference that would motivate one to utilize a second door extending parallel to the slipstream or that one would locate the transverse door completely out of the slipstream. The Examiner simply provides no reason or motivation for combining bits and pieces of the Riggles patent and the GB patent.

While each of the Riggles and GB patents generally disclose that it is desirable to have landing gear doors to cover the landing gear in the retracted position, neither suggests the unique solution provided by Applicant's invention, i.e., having a transverse door located "out of said slipstream in the open position." The Examiner admits that Riggles fails to teach this

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interrelationship and, while he implies that GB teaches this, the only disclosure actually contained in GB is that the single door is located partially in the slipstream as shown in Figure 1 in order to provide an aid "in closure assisted by airflow . . ." as noted above.

The Examiner has simply failed to identify any "reason" or "motivation" for one of ordinary skill in the art to combine the two references and therefore has established no *prima facie* basis of obviousness under 35 USC §103.

Error #3. The Examiner's combination requires that one of ordinary skill in the art ignore the Riggles teaching of a transverse door located in the slipstream and ignore the GB teaching of a landing gear door partially in the slipstream in combination with there being only a single door

In order to combine the two references and obtain Applicant's invention, the Examiner must first completely ignore the Riggles teaching of locating a transverse door in the slipstream (door 16 as shown in figures 2-4). The Examiner must also ignore the GB teaching of locating a landing gear door partially within the slipstream in the open position (door 7' shown in Figure 1). The Examiner must also ignore the GB teaching of using only a single landing gear door and instead adopt the Riggles teaching of a plurality of doors. Thus, the requirement for combining the above references and obtaining Applicant's claimed invention is that three separate teachings in the two combined prior art references would lead one of ordinary skill in the art away from the invention of Applicant's claim 1.

As the Court of Appeals for the Federal Circuit held in *In re Fine*, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988), it is "error to find obviousness where references 'diverge from and teach away from the invention at hand'." Here, in order to combine these references, the Examiner must ignore three teaching in the two references which would lead those of ordinary skill away from the combination. According to the Examiner, one of ordinary skill would ignore the GB

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teaching to locate at least part of the door in the slipstream and the Riggles teaching of locating the entire door in the slipstream. This person would then choose the Riggles teaching of a plurality of doors (one transverse and the other longitudinal) rather than the single transverse door of the GB reference. There is simple no reason given by the Examiner as to why one would pick and chose certain aspects of the prior art and ignore the specific teachings of the other aspects.

There is simply no precedent for picking and choosing portions of references and ignoring the remaining teachings of those references. Accordingly, taken as a whole, the teaching of the two references is against Applicant's claimed combination of elements and any further rejection thereunder is respectfully traversed.

SUMMARY

Independent claim 1 recites (a) a plurality of doors, (b) one of which is transverse, with respect to the other, and (c) the transverse door is located out of the slipstream. The Riggles reference at best teaches a plurality of doors with one transverse but specifically teaches that the transverse door be located entirely in the slipstream. The GB reference teaches only a single door, and that the single door which is transverse should be at least partially located in the slipstream to assist in closure. The sum total not only fails to render the inventive combination obvious, but would lead one of ordinary skill away from the invention.

As a result of the above, there is simply no support for the rejection of Applicant's independent claim 1 or claims dependent thereon under 35 USC §103. Applicant respectfully requests that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.